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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,578	11/13/2000	Daniel M. Esquibel	10992521-1	9741

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EXAMINER

YODER III, CHRISS S

ART UNIT PAPER NUMBER

2612

DATE MAILED: 08/27/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/712,578

Applicant(s)

ESQUIBEL ET AL.

Examiner

Chriss S. Yoder, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,13-18 and 21 is/are rejected.
- 7) ☒ Claim(s) 2-12,19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see pages 9-11, filed June 15, 2004, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ishida et al. (US Patent # 5,359,385).

Applicant's arguments, see pages 12, filed June 15, 2004, with respect to the rejection(s) of claim(s) 18 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ishida et al. (US Patent # 5,359,385).

Applicant's arguments, see pages 12-13, filed June 15, 2004, with respect to the rejection(s) of claim(s) 21 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ueno et al. (US Patent # 5,479,206) in view of Ishida et al. (US Patent # 5,359,385).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishida et al. (US Patent # 5,359,385).
2. In regard to claim 1, note Ishida discloses the use of an imaging device that retrieves previous settings in the imaging device (column 7, lines 59-63; and figure 4: #55; the exposure correction values are read out of memory), determining a new state of settings (column 7, line 63 – column 8, line 15; and figure 4: #60; BV1 is considered the new state), and combining the previous and new states to form an optimal state (column 7, line 63 – column 8, line 15; and figure 4: #60). Therefore, it can be seen that the Ishida device lacks the step of configuring the imaging device according to the optimal state. Although it is not explicitly stated in the reference that the imaging device is configured according the optimal state, it is implied that the optimal state is set in order to capture the image in the optimal state.
3. In regard to claim 13, note Ishida discloses that the new state is selected from by reading values from a control input on the imaging device (column 6, lines 1-8; and column 6, lines 42-44; the user can set the values using Sup and Sdn, and the camera reads the values that have been set).
4. In regard to claim 18, this is as apparatus claim, corresponding to the method of claim 1. Therefore, claim 18 has been analyzed and rejected as previously discussed with respect claims 1.
5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishida et al. (US Patent # 5,359,385) in view of Watanabe et al. (US Patent # 6,665,015).

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6. In regard to claim 14, note Ishida discloses an imaging device that finds an optimal setting as claimed in claim 1. Therefore, it can be seen that the Ishida device fails to present a plurality of sample images generated based on variations of settings, determine which sample the user selected, and select user settings corresponding to the user selected images. Watanabe discloses that the new state of settings are selected by presenting a plurality of sample images generated based on variations of settings (column 4, lines 40-50 and column 4, line 64 – column 5, lines 5; figure 7), determining which sample the user selected (column 4, lines 40-50 and column 4, line 64 – column 5, lines 5; figure 7), and selecting user settings corresponding to the user selected images (column 4, lines 40-50 and column 4, line 64 – column 5, lines 5; figure 7). Watanabe teaches that the presentation of sample images generated based on variations of settings, determine which sample the user selected, and select user settings corresponding to the user selected images is preferred in order to allow the user to easily decide which settings are the best (column 4, lines 40-43). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Ishida device to include the presentation of sample images generated based on variations of settings, determine which sample the user selected, and select user settings corresponding to the user selected images as suggested by Watanabe.

7. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishida et al. (US Patent # 5,359,385) in view of Ueno et al. (US Patent # 5,479,206).

8. In regard to claim 15, note Ishida discloses an imaging device that finds an optimal setting as claimed in claim 1. Therefore, it can be seen that the Ishida device

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lacks the step of reading the new state values from a remote computer. Ueno discloses that the new state is selected by reading values from a remote computer (column 16, lines 51-67). Ueno discloses that reading the values from a remote computer is preferred in order to rapidly transmit the image data from the camera to a computer system in order to verify the image data is correct by displaying the image for verification (column 1, lines 52-59). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Ishida device to include the use of selecting the new state values from the computer as suggested by Ueno.

9. In regard to claim 16, note Ishida discloses an imaging device that finds an optimal setting as claimed in claim 1. Therefore, it can be seen that the Ishida device lacks the use of a new state of settings that are selected by presenting a plurality of sample images on a remote computer generated based on variations of settings. Ueno discloses that the new state of settings are selected by presenting a plurality of sample images on a remote computer generated based on variations of settings (column 21, lines 16-19; figure 16: 125; the preview image is adjusted using the scroll bars 125R and 125B, with each adjustment, an new image is displayed and allows user selection of new settings), determining which sample the user selected (column 21, lines 16-19), and selecting user settings corresponding to the user selected images (column 16, lines 51-67). Ueno teaches that the use of a new state of settings are selected by presenting a plurality of sample images on a remote computer generated based on variations of settings is preferred in order to allow the operator to observe the preview images on a full size display and to select the desired image properties. Therefore, it would have

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been obvious to one of ordinary skill in the art to modify the Ishida device to include the use of a new state of settings are selected by presenting a plurality of sample images on a remote computer generated based on variations of settings as suggested by Ueno.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishida et al. (US Patent # 5,359,385) in view of Ueno et al. (US Patent # 5,479,206), and in further view of Squall et al. (US Patent # 6,623,528).

11. In regard to claim 17, note Ishida discloses an imaging device that finds an optimal setting as claimed in claim 1. Therefore, it can be seen that the Ishida device lacks the presentation of images is in the form of printed sample images generated based on variation of the plurality of settings, determining which setting is selected by the user, and selecting the plurality of settings corresponding to said user selected printed sample image. Ueno discloses that the new state of settings are selected by presenting a plurality of sample images generated based on variations of settings (column 21, lines 16-19; figure 16: 125; the preview image is adjusted using the scroll bars 125R and 125B, with each adjustment, an new image is displayed and allows user selection of new settings), determining which sample the user selected (column 21, lines 16-19), and selecting user settings corresponding to the user selected images (column 16, lines 51-67). Ueno teaches that the use of a new state of settings are selected by presenting a plurality of sample images on a remote computer generated based on variations of settings is preferred in order to allow the operator to observe the preview images on a full size display and to select the desired image properties. Squilla discloses the use of a printed sheet of sample images (column 1, lines 59-63; and figure

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3). Squilla teaches that the use of a printed sheet of sample images is preferred in order for the user to have a physical copy of the images with a checkbox to easily select each image (column 4, lines 220-30). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Ishida device to include the presentation of images in the form of printed sample images generated based on variation of the plurality of settings, determining which setting is selected by the user, and selecting the plurality of settings corresponding to said user selected printed sample image as suggested by Ueno and Squilla.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ueno et al. (US Patent # 5,479,206) in view of Ishida et al. (US Patent # 5,359,385).

13. In regard to claim 21, note Ueno discloses a means for selecting a mode (column 5, lines 30-45), a means for adjusting a plurality of settings (column 4, lines 56-60).

Therefore, it can be seen that the Ueno device lacks the means for tracking user preferences. Ishida discloses the use of a means for tracking user preferences (column 7, line 48 – column 8, line 15). Ishida teaches that the use of a means for tracking user preferences is preferred in order to predict and modify the correction that the photographer wants (column 8, lines 4-10). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Ueno device to include the use of a means for tracking user preferences as suggested by Ishida.



***Allowable Subject Matter***

14. Claims 2-12 and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. As for claims 2, the prior art does not teach or fairly suggest the use of an imaging device that combines the previous and new settings using a point representation in a settings space and can add the new setting as a point in a cluster of points that are previous settings and calculate the optimal setting based on the new point and the cluster of points.

16. As for claims 10, the prior art does not teach or fairly suggest the use of an imaging device that uses a state space to define a plurality of settings and combining the previous state with a new state and where the optimal state is determined using a location between the previous and new state.

17. As for claims 19, the prior art does not teach or fairly suggest the use of an imaging device that combines the previous and new settings using a point representation in a settings space and can add the new setting as a point in a cluster of points that are previous settings and calculate the optimal setting based on the new point and the cluster of points.

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18. As for claims 20, the prior art does not teach or fairly suggest the use of an imaging device that uses a state space to define a plurality of settings and combining the previous state with a new state and where the optimal state is determined using a location between the previous and new state.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chriss S. Yoder, III whose telephone number is (703) 305-0344. The examiner can normally be reached on M-F: 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber can be reached on (703) 305-4929. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CSY  
August 13, 2004

  
NGOC-YEN VU  
PRIMARY EXAMINER